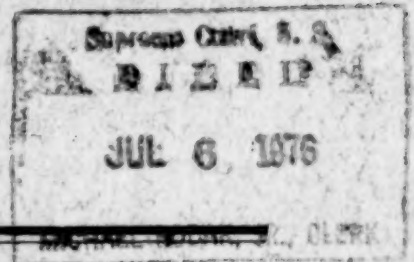


No. 75-1479



In the Supreme Court of the United States

OCTOBER TERM, 1975

**LOCAL UNION No. 795, INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AFL-CIO, ET AL., PETITIONERS**

v.

MICHAEL J. McDONALD, ET AL.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

BRIEF FOR THE SECRETARY OF LABOR IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 35a-63a) is reported at 525 F.2d 1217. The opinion of the district court (Pet. App. 1a-28a) is reported at 400 F. Supp. 660. The supplemental opinion and order of the district court (Pet. App. 29a-34a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 14, 1976. The petition for a writ of certiorari was filed on April 13, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

I. Whether the court of appeals correctly dismissed as moot petitioners' appeal from that part of the district

court's judgment granting the relief requested by the Secretary of Labor in this suit under the Labor-Management Reporting and Disclosure Act of 1959.

2. Whether, if the case was not moot, the Secretary was entitled to the relief granted.

STATEMENT

Petitioners seek review of a decision of the court of appeals dismissing as moot petitioners' appeal from that part of the district court judgment granting the respondent Secretary of Labor the relief he sought under Titles III and IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat. 519, *et seq.*, as amended, and affirming that part of the judgment awarding the individual respondents the special relief they sought.

The facts are accurately summarized in the opinion of the court of appeals. In May 1971, petitioner International Longshoremen's Association placed its subordinate union, Local 795, Gulfport, Mississippi, in trusteeship, thereby assuming direct control and responsibility for the internal activities, property, and funds of the local. Although the trusteeship was imposed because the local's president, Harold Oliver, had mismanaged the local's affairs and abused his official powers, the trustee appointed by the International, Fred R. Field, Jr., did not remove Oliver from the office. Rather, Field allowed the existing officers, including Oliver, to continue to manage the local's affairs.

In February 1973, several members of Local 795 filed a complaint with the Secretary seeking his intervention to end the trusteeship. The Secretary's investigation showed that no valid purpose would be served by continuing the trusteeship, which had already existed for more than 18 months. However, the Secretary did not, at that time, bring suit to dissolve the trusteeship, because he

learned that the International intended to restore Local 795's autonomy upon election of new officers for the local. The timetables established by the International called for an election on October 6, 1973, and for termination of the trusteeship upon the formal installation of the newly elected officers on November 3, 1973.

While the election was held as scheduled, the victorious candidates were not installed and the trusteeship did not terminate as planned on November 3, 1973. The International declared the election of October 6, 1973, invalid and scheduled a new election for May 1974. In the interim, it directed that Local 795 would remain under the trusteeship.

The victorious candidates in the October 6 election (the other respondents herein), unsuccessful in obtaining relief through the union procedures available, lodged a protest with the Secretary complaining about the International's failure to install them as officers. After again investigating the situation in Local 795 and finding that the October 6 election should not have been set aside, the Secretary instituted judicial proceedings under Titles III and IV of the LMRDA seeking both the discontinuance of the trusteeship and the installation of the new officers. The district court consolidated the Secretary's action with the pending action previously brought by respondents under Titles I and III of the LMRDA.¹

After a lengthy trial, the district court, finding the October 6 election valid, entered final judgment ordering respondents installed into office for a two-year term, "said term having commenced running October 6, 1973"

¹In addition to the relief sought by the Secretary, the individual respondents sought back pay and attorney's fees (Pet. App. 29a-30a).

(Pet. App. 32a). The court further ordered the International to discontinue the trusteeship and restore to Local 795 all rights, privileges, and powers that it would normally exercise (Pet. App. 32a-34a). In addition, the court enjoined the International from further violating the provisions of Title III of the LMRDA or from declaring respondent McDonald, president-elect of Local 795, ineligible for office "because of any failure, omission or lack of welfare benefit eligibility which precedes his being installed" (Pet. App. 33a).²

During the pendency of petitioners' appeal from this decision, respondents' two-year terms of office expired, and a new election for Local 795 officers was held. With one exception, all the candidates elected in October 6, 1973, were reelected in the scheduled election held on October 4, 1975.

Because of this development, the Fifth Circuit dismissed as moot petitioners' appeal from that part of the district court order granting the Secretary the relief he requested (Pet. App. 46a-48a). The court noted that the respondents no longer held office by virtue of the district court judgment but rather as a result of their victory in the new election, the validity of which was not an issue before the court on appeal. The court distinguished cases holding that an intervening election does not moot a LMRDA suit brought by the Secretary (Pet. App. 47a):

In [the] present case, * * * the Secretary was not seeking to set aside an election as invalid but, to the contrary, took the position that the election was valid. * * * [T]he Secretary has been granted the relief he sought. The trusteeship is ended. The

²The district court also granted the individual respondents the separate relief they sought—back pay and attorney's fees.

[respondents] have served the terms to which they were elected, the terms which the Secretary sought to vindicate. Accordingly, the public interest in the Secretary's suit has been satisfied.

Thus, according to the court of appeals, "[n]othing remains but a consideration of the attorney's fees and the back pay awarded pursuant to the suit brought by those other than the Secretary" (Pet. App. 47a). That part of the district court judgment awarding relief to the individual respondents was affirmed (Pet. App. 48a-63a).³

ARGUMENT

1. Under Article III of the Constitution, federal courts may exercise jurisdiction only in actual cases or controversies. *DeFunis v. Odegaard*, 416 U.S. 312. The controversy must exist not only when the suit is instituted but also at each stage of appellate or certiorari review. *Roe v. Wade*, 410 U.S. 113, 125; *Preiser v. Newkirk*, 422 U.S. 395, 401. In this case, the individual respondents' court-ordered, two-year terms of office expired and a new election was held during the pendency of petitioners' appeal to the court of appeals. The case was thereby mooted.

³The court of appeals affirmed the district court's award of back pay to respondent McDonald, president-elect of Local 795, for the time he would have served as president of the local union had he been installed into office on November 3, 1973, and the award of attorney's fees to respondents' counsel (Pet. App. 48a-63a). The Secretary took no position in the lower courts on the award of back pay and attorney's fees. The court of appeals' disposition of those issues does not significantly affect the Secretary's responsibilities under the Act. Nor, in our view, are the issues of sufficient general importance to warrant review by this Court.

a. Whether premised on an analysis under Title III or Title IV of the LMRDA, the crux of the district court's judgment was its finding that the Local 795 election of October 6, 1973, was valid. Based on this finding, the district court ordered the International to discontinue the trusteeship over Local 795 and directed that individual respondents be formally installed into office for a two-year term ending October 5, 1975. In order to protect the respondents' terms of office, the district court enjoined the International from further violating Title III of the LMRDA. That is, the court prohibited the International from reimposing the trusteeship on the ground that the respondents were not validly elected officers of Local 795. Similarly, the court enjoined the International from declaring the president-elect of Local 795 ineligible for that office during his two-year term.⁴

Since the coercive effect of the district court's judgment ended at the expiration of the individual respondents' terms of office, there is not now, nor was there when the case was being considered by the court of appeals, a live controversy between the parties arising from the October 6, 1973, election. Respondents' present tenure in office is not a consequence of the district court's judgment. Rather, it is based not on the

⁴At the time of the October 6, 1973, election, eligibility to run for and hold elective office in Local 795 was controlled by the International's 1973 Constitution and By-Laws. After the election, a new Constitution and By-Laws for Local 795 were adopted. The new Constitution has more restrictive standards for holding office. The district court enjoined the International from declaring McDonald unqualified to hold office on the basis of these new standards during the two-year term of office.

district court's judgment but on their victory in the October 4, 1975, election. The validity of that election was not before the district court or the court of appeals, and it is not before this Court.⁵

b. The decisions of this Court in *Wirtz v. Local 153, Glass Bottle Blowers Assn.*, 389 U.S. 463, and *Wirtz v. Local 125, Laborers' International Union*, 389 U.S. 477, are not to the contrary. The Court there held that, when the Secretary challenges the validity of a union election under Title IV and "proves the existence of a §401 violation that may have affected the outcome of a challenged election, the fact that the union has already conducted another unsupervised election does not deprive the Secretary of his right to a court order declaring the challenged election void and directing that a new election be conducted under his supervision" (*Bottle Blowers, supra*, 389 U.S. at 475-476). Since the Secretary is entitled under the statute to an order directing that a new supervised election be held, the intervention of another unsupervised election does not eliminate the controversy.

Here, by contrast, a successful appeal by petitioners on the pertinent issues would not entitle them to a new election supervised by the Secretary but at most to

⁵Before a suit challenging the validity of Local 795's most recent election would be judicially cognizable, a complaining union member would have to exhaust his internal union remedies and thereafter file a complaint with the Secretary of Labor. 29 U.S.C. 482; *Trbovich v. United Mine Workers*, 404 U.S. 528. If the Secretary determined not to bring suit, the complaining union member would be entitled only to a statement of reasons why the Secretary did not institute judicial action. *Dunlop v. Bachowski*, 421 U.S. 560.

a new election. The intervention of precisely such a new election—the validity of which is not at issue in this case—vitiates the dispute.⁶

2. Even if the case was not moot, petitioners were not entitled to a reversal of that part of the district court judgment granting relief to the Secretary.⁷

Section 304(a) of Title III of the LMRDA, 29 U.S.C. 464(a), authorizes the Secretary to bring suit to challenge the maintenance of a trusteeship. Upon properly invoking the jurisdiction of the district court under Title III,⁸ the Secretary is entitled to “such relief (including injunctions) as may be appropriate.” 29 U.S.C. 464(a).

Once properly imposed, a trusteeship is presumptively valid for 18 months. 29 U.S.C. 464(c). However, at the end of 18 months the trusteeship is presumed invalid,

⁶Petitioners contend (Pet. 14-16) that, if the case was moot, the court of appeals should have vacated the judgment of the district court and remanded the case with directions to dismiss the complaint. However, petitioners made no motion to vacate the district court judgment. Having slept on their rights, petitioners cannot now complain that the court of appeals should have vacated the district court judgment. *United States v. Munsingwear*, 340 U.S. 36, 40-41.

⁷In the course of its ruling on the attorney's fee and back pay issues, the court of appeals sustained the district court's order dissolving the trusteeship and ordering respondents installed into office (Pet. App. 53a-61a). Thus, while petitioner's appeal as to the Secretary was dismissed as moot, the court made clear that it was satisfied that the district court's judgment on the underlying merits of the case was correct.

⁸Either the Secretary or a member of the trustee union can bring a Title III suit. The Secretary's authority is conditioned upon the filing of a complaint by a member of the local union in trusteeship. 29 U.S.C. 464(a). Such a complaint was filed in this case (Pet. App. 40a).

and the district court is to decree it discontinued unless the union by clear and convincing evidence shows that continuation of the trusteeship is necessary for an allowable purpose. *Ibid.*

In this case, the trusteeship imposed on Local 795 by the International was in existence for almost three years when the Secretary brought this suit. It was therefore presumptively invalid and had to be ordered discontinued unless the International could convince the district court by clear and convincing evidence that its continuance was necessary.

The only reason the International offered for continuing the trusteeship after the October 6, 1973, election was that there were no validly elected officers to assume control of the local's affairs. The district court, however, found that there were no irregularities warranting the setting aside of the October 6 election (Pet. App. 26a-27a). The court's findings were not “clearly erroneous.” Rule 52(a), Fed. R. Civ. P. Since the International failed to sustain its burden of showing that the trusteeship should continue, the district court properly ordered it terminated (Pet. App. 27a-28a).

Moreover, ancillary to its order terminating the trusteeship, the district court had the authority under Title III to declare the October 6, 1973, election valid and to order the respondents installed into office. Congress intended suits challenging a trusteeship to be equitable in nature. S. Rep. No. 187, 86th Cong., 1st Sess. 19 (1959).⁹ In a Title III suit, the district court has the

⁹Congress anticipated that, if a trusteeship were held invalid, the court would enter an order “turning the affairs of the local union over to its members.” S. Rep. No. 187, *supra*, at 19.

broad equitable power to fashion a suitable remedy incident to its order terminating the trusteeship. See *Brennan v. United Mine Workers*, 475 F.2d 1293, 1296, n. 12 (C.A. D.C.); *Schonfeld v. Raftery*, 271 F. Supp. 128, 148 (S.D. N.Y.), affirmed, 381 F.2d 446 (C.A. 2). Contrary to petitioners' claim (Pet. 11), there is nothing in the statute or the legislative history to support the view that the district court's equitable power is limited to ordering a new election. Indeed, given the district court's finding that the October 6, 1973, election was valid and that the individual respondents were the duly elected officers of Local 795, it would have been pointless for the court to have ordered a new election.

Finally, while Title III provides complete support for the judgment in favor of the Secretary, the district court also had inherent equitable power under Title IV of the LMRDA to order respondents installed into office. Since the Secretary's suit sought to vindicate the right of union members "to be eligible to be a candidate and to hold office" (29 U.S.C. 481(e)), it was appropriate for the district court to enforce that right by ordering the duly elected officers installed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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